

## MINUTES OF APRIL 1, 2013

The regular meeting of the Sussex County Board of Adjustment was held on Monday, April 1, 2013, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with Mr. James Sharp – Assistant County Attorney, and staff members, Mr. Lawrence Lank – Planning & Zoning Director, Ms. Melissa Thibodeau – Zoning Inspector II, and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Revised Agenda, with Case No. 11184 – CMF Bayside, LLC being withdrawn. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes of March 4, 2013 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously to approve the Findings of Fact for March 4, 2013. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

## PUBLIC HEARINGS

**Case No. 11178 – Albun, LLC c/o Robert Minutoli** – southeast intersection of U.S. Route 113 (DuPont Boulevard) and Road 321 (Woodbranch Road) southwest intersection of Road 325 (Alm's House Road) and Road 326 (Bethesda Road). (Tax Map I.D. 1-33-2.00-22.00, 23.00, 24.00, & 24.01)

An application for a special use exception for promotional activities as accessory uses to a speedway for a period of five (5) years.

Mr. Lank presented the case and stated that the Office of Planning & Zoning did not receive any correspondence in reference to this case. Lewis Johnson was sworn in to testify about the Application.

James Fuqua, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a special use exception for promotional activities for a period of five (5) years; that the Georgetown Speedway was built in 1949 and is located next to Route 113; that the Property is used for racing in the spring and summer months; that other than auto racing, the Property is used for non-profit community events such as tractor shows, rodeos, and carnivals; that these community events are sporadic in nature; that this use was granted approval of a special use exception in 1989 and again in 2003; that the current owner was not

aware the approval had expired; that the Applicant applied in February 2013 for a new application as required; that the approved use for the Property is auto racing and that the proposed special use exception would allow for a lesser use of the Property as well; and that the use will not substantially adversely affect the adjacent properties. Mr. Fuqua submitted exhibits for the Board to review. Mr. Johnson, under oath, confirmed the statements made by Mr. Fuqua.

The Board found that four (4) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception No. 11178 for a period of five (5) years for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated for a period of five (5) years**.  
Motion carried 5 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11179 – Nassau Investments, LLC** – south of Route 1 (Coastal Highway) approximately 2,125 feet northwest of Route 9 (Lewes Georgetown Highway). (Tax Map I.D. 3-34-5.00-95.00)

An application for a special use exception to replace an existing non-conforming billboard, a variance from the side yard setback requirement for a billboard, a variance from the distance requirement from another billboard, and a variance from the distance requirement from a dwelling to a billboard.

Mr. Lank presented the case and stated that the Office of Planning & Zoning did not receive any correspondence in reference to this case.

Bruce Geyer and Dale McCalister were sworn in to testify about the Application. David Hutt, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a special use exception to replace an existing non-conforming billboard, a variance of 29.7 feet from the 50 feet side yard setback requirement for a billboard, a variance of 279.3 feet from the 300 feet setback requirement from another billboard, a variance of 61.2 feet from the 300 feet setback requirement from a dwelling for a billboard, and a variance of 43.3 feet from the 300 feet setback requirement from a dwelling for a billboard.

Mr. Hutt stated that Bruce Geyer is the managing member of Nassau Investments, LLC; that Dale McCallister is a representative of First State Signs; that the Property is located near Nassau Bridge and is zoned commercial; that the existing billboard has been on the lot for at least twenty five (25) years and is a pre-existing, non-conforming structure; that the existing structure is in need of repair; that the Applicant wants to replace the wooden structure with a steel mono-pole structure; that the proposed billboard will be safer and stronger, and provides a better site line; that the monopole structure is better equipped to handle high winds; that the billboard will meet the required square-footage and height requirements for a billboard; that the existing billboard is only twenty (20) feet tall; that the proposed billboard will be twenty five (25) feet tall; that the neighboring property has two (2) billboards and there are numerous billboards in the area so the use is consistent with the neighborhood; that neighboring communities were built after the billboard was put in place; that units in neighboring Carabino Place were built in 2000 and are within 300 feet of the billboard; that the proposed billboard will be in the exact location as the existing billboard; that the non-conforming billboard and neighboring non-conforming billboards create a uniqueness; that the variances will enable reasonable use of the Property as they will allow for a safer and improved billboard on the Property; that the difficulty was not created by the Applicant because the billboard is a pre-existing billboard and the neighboring townhouses came after the placement of the billboard; that the variances will not alter the essential character of the neighborhood; that the billboard has not stopped development of adjacent lands; that the variances sought are the minimum variances necessary to afford relief; and that the billboard has current leases for at least one (1) year and there will not be a vacancy issue. Mr. Hutt submitted exhibits for the Board to review. Mr. Geyer and Mr. McCalister, under oath, confirmed the statements made by Mr. Hutt.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception and Variance Application No. 11179 for the requested special use exception because the use will does not substantially affect adversely the uses of the adjacent and neighboring properties and the variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to the existence of the non-conforming billboards for over twenty five (25) years;
2. The variances are necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant because the billboard pre-dates the code provisions pertaining to billboards and neighboring dwellings were placed after the billboard was constructed;
4. The variances will not alter the essential character of the neighborhood;
5. The billboard has not had a negative impact on the neighborhood;

6. The variances sought are the minimum variances necessary to afford relief as the billboard is a standard sized billboard.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception and variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11180 – Sussex Tree, Inc.** – north of Route 24 (John J. Williams Highway) west of Route 1 (Coastal Highway). (Tax Map I.D. 3-34-18.00-40.03)

An application for a special use exception to retain a manufactured home type structure as a sales office for a period of five (5) years.

Mr. Sharp stated to the Board that the Applicant has been a client in the past and wanted to advise the Board that the Board should refer legal questions on this Application to Vince Robertson, Esquire.

Mr. Lank presented the case and stated that a special use exception for the Property was granted in 2005. Mr. Lank stated that the Office of Planning & Zoning did not receive any correspondence in reference to this case.

Jeff Meredith and Mary Meredith were sworn in and testified requesting a special use exception to retain a manufactured home type structure as a sales office for a period of five (5) years. Mr. Meredith testified that the Applicant purchased the Property four (4) years ago; that the unit was on the Property at that time; that he uses the unit as a small sales office for Sussex Tree and a landscaping business; that the prior owner used the Property as a produce area and a mulch and stone depot; that he was unaware the use had expired; that he received a letter from the Planning & Zoning office advising him to re-apply for a special use exception; that he does not plan to build a permanent structure within the next five (5) years; that he plans to build a storage building first; that his office staff works in the unit; that the unit was new when placed on the Property approximately six (6) years ago; and that the unit is in good shape.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception No. 11180 for a period of five (5) years for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties. The manufactured home type structure has been on the Property for some time without adverse affect to the neighborhood.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated and for a period of five (5) years**. Motion carried 5 – 0.

The vote by roll call: Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11181 – Scruff, LLC d/b/a Papa Grandes** – north of Route 54 (Lighthouse Road) east of Bennett Avenue, being Lot 13 thru 15 within Glen Acres development. (Tax Map I.D. 5-33-20.19-91.00, 92.00, 93.00, & 99.00)

An application for variances from the front yard setback requirement for a through lot.

Mr. Lank presented the case. Mr. Lank stated that the Office of Planning & Zoning did not receive any correspondence in reference to this case.

Matthew Haley was sworn in to testify about the Application. Adam Gerber, Esquire, presented the case to the Board on behalf of the Applicant and stated that the Applicant is requesting a variance of 42.83 feet from the 60 feet front yard setback requirement for a through lot for a proposed deck, and a variance of 59.64 feet from the 60 feet front yard setback requirement for a through lot for an existing deck. Mr. Gerber stated that the existing deck needs to be expanded to allow for a handicap ramp and a second floor deck; that the existing and proposed decking is required by the State Fire Marshal; that the Applicant owns the adjacent property where the Catch 54 Restaurant is located; that the Property is unique because it is oddly shaped and narrow; that the Property is also a through lot which creates additional setback requirements; that the Applicant is unable to open the restaurant without the handicap ramp; that the variances are necessary to enable reasonable use; that the Applicant would be at a competitive disadvantage without decking for patrons because nearby restaurants have decks; that the Applicant purchased the Property in 2011 and a deck existed at that time; that the difficulty has not been created by the Applicant; that a portion of the building has been removed to allow more parking spaces; that the variances will not alter the essential character of the neighborhood and will actually enhance the character of the neighborhood; that the variances are not detrimental to public welfare; that the variances sought are the minimum variances necessary to afford relief; and that the second floor deck is necessary for ingress and egress per the Fire Marshal requirements. Mr. Gerber submitted exhibits to the Board for review.

Mr. Haley testified that he has been in the restaurant business for years and operates over twenty (20) restaurants; that he owns Catch 54 which has a deck and that most restaurants in the area have decks; that the building had a deck when he purchased it; that he has not expanded the building but actually removed a portion of the building to increase parking; that the architect and

Fire Marshal required the improvements; that he wants to have a safe restaurant; and he confirmed the statements made by Mr. Gerber.

Mr. Robert Rollins was sworn in and testified in support of the Application. Mr. Rollins testified that he is the architect for the project; that he has been an architect for over twenty (20) years; that the code requires handicap accessibility; that the Fire Marshal requires two methods of ingress and egress to the second floor; that the second floor deck is needed to meet the required ingress / egress requirements; and that the proposed location is necessary to prevent losing all the indoor seating area for the restaurant.

Kim Hamer was sworn in and testified in support of the Application and testified that she is a realtor in the area; that the variances will not alter the essential character of the neighborhood; that the variances will not be detrimental to the public welfare; that the decking will enhance the neighborhood and is a valuable asset to the restaurant; and that the Applicant needs the deck to be competitive with other restaurants.

Herb Hendricks was sworn in and testified in support of the Application and testified that he is the contractor working on the project; that the ramp and stairway are necessary for egress; that the restaurant cannot open without the handicap ramp and the second floor deck with staircase; and that the variances will enable reasonable use of the Property.

The Board found that five (5) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11181 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape and that the ramp and the State Fire Marshal requirements create a unique situation;
2. The Property cannot be built in strict conformity with the Sussex County Zoning Code;
3. The variances are necessary to enable reasonable use of the Property;
4. The difficulty was not created by the Applicant;
5. The variances will not alter the essential character of the neighborhood as there are restaurants nearby; and
6. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Hudson, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call: Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11182 – Cape Henlopen School District** – northwest of Kings Highway and across from Road 267 (Gills Neck Road). (Tax Map I.D. 3-35-8.00-34.00)

An application for a special use exception to retain a manufactured home type structure for an IT Department for a period of five (5) years.

Mr. Lank presented the case. Mr. Lank advised the Board that a special use exception for this structure was approved in November 2000 for classroom space and again approved for the same use in November 2008.

Brian Bassett, Director of Administrative Services, was sworn in and testified requesting a special use exception to retain a manufactured home type structure for an IT Department for a period of five (5) years; that the unit has recently been remodeled with a new roof and siding; that the unit cannot be seen from the road; that the unit is used for 13 to 14 IT staff members; that in June 2013 the decision will be made whether additional office space will be constructed; that the district is growing very quickly and the IT department is growing as well due to the use of smart boards and laptops; that the plan is to remove all modular classrooms and offices throughout the district; that the unit has been on the Property since 2000 and is on a permanent foundation; that he was not aware the approval from 2008 had expired; that the District and the Town of Lewes own adjacent properties; that there are no residential properties adjacent to the site; and that the use does not have an adverse affect to the surrounding properties.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11182 for a period of five (5) years for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated for a period of five (5) years**.  
Motion carried 5 – 0.

The vote by roll call: Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11183 – Steven Cropper** – east of Route 113 (DuPont Boulevard) approximately 1,575 feet north of Road 400 (McCabe Road). (Tax Map I.D. 5-33-9.00-45.03)

An application for a special use exception to retain a manufactured home type structure for a sales office for a period of five (5) years.

Mr. Lank presented the case and stated that the special use exception was originally approved on May 3, 2004. Mr. Lank read one (1) letter of no objection into the record.

Steven Cropper was sworn in and testified requesting a special use exception to retain a manufactured home type structure for a sales office for a period of five (5) years; that the unit has been on the Property since 1988; that he operates an auto sales and printing company from the Property; that he uses the unit for an office; that the Delaware Department of Transportation ("DelDOT") has approved the ingress / egress to and from the Property; that DelDOT is studying possible routes which could impact the Property as one proposal has an exit ramp being placed on the site; that due to the uncertainty regarding DelDOT's plans which may impact his business by restricting access, he is hesitant at this time to construct a permanent structure; and that all signs on the Property are in compliance as they advertise on-site businesses only.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Special Use Exception Application No. 11183 for a period of five (5) years for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties as the business on the Property has been in operation since 1988.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for the reasons stated for a period of five (5) years**.  
Motion carried 5 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11185 – Robert Grau & Julia Grau** – east of Road 285 (Beaver Dam Road) approximately 520 feet south of Road 280B (Conley's Chapel Road). (Tax Map I.D. 2-34-10.00-116.00)

An application for a special use exception for a garage / studio apartment.

Mr. Lank presented the case. Mr. Lank stated that the Office of Planning & Zoning did not receive any correspondence in reference to this case.



Julia Ann Grau was sworn in and testified requesting a special use exception for a garage/studio apartment; that she purchased the Property in 1994; that the apartment was constructed in 1987; that the survey completed in 1994 showed no zoning violations; that the prior owner used the garage / studio apartment; that she converted the existing downstairs of the garage into a guest house; that she does not rent the guest house and only uses it for family; that there is no kitchen in the guest house; that there is no access to the upstairs of the garage from the guest house; that she rents the upstairs apartment; that the Property has three (3) separate utility meters; that there is a dedicated parking area for the apartment; that the Property has  $\frac{3}{4}$  acres; and that the apartment is usually occupied but there are periods where the apartment is vacant. Ms. Grau submitted pictures for the Board to review.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

At the conclusion of the public hearing, the Chairman referred back to this case. Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11185 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call: Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11186 – Robert McDonald & Sharon McDonald** – north of Route 54 (Lighthouse Road) south of Blue Indigo Road, being Lot 4678 within Americana Bayside. (Tax Map I.D. 5-33-19.00-1183.01)

An application for a variance from the rear yard setback requirement.

Mr. Lank presented the case. Mr. Lank stated that the Office of Planning & Zoning did not receive any correspondence in reference to this case.

Robert McDonald was sworn in and testified requesting a variance of 2 feet from the 10 feet rear yard setback requirement for a proposed screen porch; that the Property is located at the extreme end of the subdivision; that there is a retention pond and berm located to the rear of his property; that the proposed screen porch cannot be seen from the road; that the neighbor on the adjacent property supports the Application; that the berm at the rear of the Property makes it unique; that the variance will not alter the essential character of the neighborhood; that the variance will not burden the neighborhood; that the variance is necessary to enable reasonable use; that the difficulty has been created by the Applicant because he thought he had enough room to build the porch but he measured the setback incorrectly; and that he will not build a porch if the request is denied.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Rickard that the variance be denied. There was no second. Motion died for the lack of a second.

Motion by Mr. Mills, seconded by Mr. Workman, and carried unanimously that the case be taken under advisement. Motion carried 5 – 0.

The vote by roll call: Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

At the conclusion of the public hearing, the Chairman referred back to this case and the Board discussed the Application. Mr. Rickard stated that he would move that the Board recommend denial of Variance Application No. 11186 for the requested variance based on the record made at the public hearing since the Application does not meet the standards for granting a variance. The Applicants are creating their own hardship.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the variance be **denied since the Applicant did not meet the standards for granting a variance**. Motion carried 4 – 1.

The vote by roll call: Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – nay, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11187 – B G & L Assoc.** – south of Road 326A (West State Street) approximately 1,148 feet east of Road 82 (Delaware Avenue). (Tax Map I.D. 1-33-17.09-5.01)

An application for a variance from the side yard setback requirement.

Mr. Lank presented the case. Mr. Lank stated that the Office of Planning & Zoning did not receive any correspondence in reference to this case.

William Byler, Jr., and Steve Kern were sworn in and testified requesting a variance of 9 feet from the 20 feet side yard setback requirement for a proposed loading dock. Mr. Byler testified that the proposed loading dock is for the existing business; that the location of the existing building in relation to the property line creates a unique situation; that the ability to effectively use the site is greatly diminished without the proposed loading dock; that the adjacent property is owned by the Town of Millsboro and is improved by Little League Fields; that a railroad track is located to the rear of the Property; that the loading dock will have a roof over it but will not have sides to the cover; that the loading dock cannot be constructed without a variance; that they believe the trucks can be negotiated into the loading dock area while staying on the Property; that there is no fence between the Property and the adjacent property housing the Little League fields; and that the width of the dock is needed to maneuver forklifts and store pallets during the loading and unloading of products.

Mr. Kern testified that approximately eight (8) or nine (9) trucks a week will use the loading dock; that the Applicant is willing to erect a fence on the property line to prevent trucks from riding on to the adjacent properties; that the Applicant will install crush and run gravel in the loading area; that the loading dock will provide more options for loading and unloading supplies; and that the Applicant operates a paper and janitorial supply distribution business.

The Board found that no parties appeared in support of or in opposition to the Application.

Motion by Mr. Hudson, seconded by Mr. Mills, and carried unanimously that the case be **tabled until April 15, 2013**. Motion carried 5 – 0.

The vote by roll call: Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11188 – Fitzgerald Deputy Teatown Road LLC** – south of Road 616 (Teatown Road) approximately 5,144.50 feet east of Road 615 (Hidden Meadow Lane). (Tax Map I.D. 1-30-5.00-9.00)

An application for a special use exception to retain a single wide manufactured home on less than ten (10) acres and a variance from the front yard setback requirement.

Mr. Lank presented the case. Mr. Lank stated that the parcel was already separate from the farm because the rest of the Property is located across the street.

Kirby Fitzgerald and Bob Nash were sworn in and testified requesting a special use exception to retain a single wide manufactured home on less than ten (10) acres and a variance of 6.8 feet from the 40 feet front yard setback requirement for an existing manufactured home. Mr. Nash testified that the manufactured home is on a small portion of land on an existing farm and the rest of the farm is located across the street; that the Applicant plans to sell the Property; that the Applicant wishes to subdivide this small portion of the Property which houses the existing manufactured home and use the existing unit for a long standing employee of the Applicant; that the Property will be sold to their tenant; that the unit has been on the lot since the 1970's; that the irregular lot creates a hardship; that the property line also runs with an existing ditch; that the Property cannot be built in strict conformity with the Sussex County Zoning Code; that the variance is necessary to enable reasonable use of the Property; that the difficulty was not created by the Applicant; that use and variance will not alter the essential character of the neighborhood; that there are five (5) other manufactured homes in the area; that stick-built dwellings have been constructed since the existence of the manufactured home so those neighbors were aware of the existence of the manufactured home when they built their dwellings; that the dwelling is partially obstructed by woods; that the variance sought is the minimum variance to afford relief; and that the variance will have no adverse effect on property values.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception and Variance Application No. 11188 for the requested special use exception and the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique in shape and it is separated from the main property by an existing street;
2. The variance is necessary to enable reasonable use of the Property;
3. The difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance to afford relief.
6. The use does not substantially affect adversely the uses of the adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception and variance be **granted for the reasons stated**. Motion carried 4 – 1.

The vote by roll call: Mr. Mills – nay, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

#### **OLD BUSINESS**

**Case No. 11171 – Dale McCalister, First State Signs** – southwest of Route 1 (Coastal Highway) approximately 1,980 feet northwest of Route 9 (Lewes Georgetown Highway). (Tax Map I.D. 3-34-5.00-96.00)

An application for a special use exception to replace an existing billboard, a variance from the square footage required for a billboard, the maximum height requirement, side yard setback, a variance from another billboard, and from a dwelling.

The Board discussed this case, which has been tabled since March 18, 2013.

Mr. Mills stated that he would move that the Board recommend approval in part and denial in part of Special Use Exception and Variance Application No. 11171. Mr. Mills moved that the special use exception be approved based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties and moved that some of the requested variances be approved based on the record made at the public hearing for the variance of 46 feet from the 50 feet side yard setback requirement for a billboard, the variance of 13 feet from the 300 feet separation requirement from another billboard, the variance of 58 feet from the 300 feet separation requirement from a dwelling for a billboard, and the variance of 65 feet from the 300 feet separation requirement from a dwelling for a billboard for the following reasons:

1. The billboard cannot be built in strict conformity with the Sussex County Zoning Code without the requested setback variances;
2. The difficulty was not created by the Applicant;
3. The variances granted are necessary to enable reasonable use of the Property;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

As part of his Motion, Mr. Mills moved that the Board deny the requested 216 square-foot variance from the 600 square-foot requirement for a billboard and the 15 feet variance from the required 25 feet maximum height requirement for a billboard based on the record made at the public hearings and for the following reasons:

1. The difficulty is being created by the Applicant; and
2. The variances are not necessary to enable reasonable use of the Property.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception and variances for the side yard setback and separation variances be **granted for the reasons stated and that the request for variances of the square footage and height requirements be denied for the reasons stated**. Motion carried 5 – 0.

The vote by roll call: Mr. Workman – yea, Mr. Rickard – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11168 – The Home of The Brave Foundation, Inc.** – east of Road 633 (Griffith Lake Drive) approximately 440 feet north of Road 620 (Abbotts Pond Road). (Tax Map I.D. 1-30-2.00-13.20)

An application for a special use exception for women veterans' facility.

The Board discussed this case which has been tabled since April 1, 2013.

Mr. Sharp stated that any correspondence the Planning & Zoning Office received after the public hearing cannot be considered by the Board in its deliberation and that the decision is to be based on the public record only.

Mr. Rickard stated that the Property has been in disrepair; that the Applicant has made improvements to the Property such as work to the interior of the residence and landscaping improvements; that there are rules in place to hold the residents accountable; that the veterans will have supervision seven (7) days a week, 24 hours a day; that the veterans are subjected to random drug testing during their stay; that there is no other like facility to compare this use to and it differs from a shelter; that the use will not have a substantial adverse effect to the neighborhood; that there is no evidence that property values will be affected; and that he feels that the opposition's request to seek another location is discriminatory. For these reasons, Mr. Rickard stated that he seeks to approve the Application.

Mr. Mills stated that he disagrees with Mr. Rickard; that the Applicant has failed to demonstrate how the use will not substantially adversely affect the neighborhood; that a five (5) bedroom dwelling is not sufficient for six (6) adults and children; that there was no professional testimony submitted from a realtor or appraiser to show there will be no impact to property values; that a septic designer testified the negative impact a septic system needed for this capacity would have to neighboring wells; that he gives more weight to the septic designer's testimony than the testimony provided by the Applicant's contractor regarding the septic system; and that transportation for unscheduled activities has not been addressed.

Mr. Rickard stated that the emergency response time is the same for the neighbors and he does not think that is a valid concern; and that the proposed use will not substantially affect adversely the uses of neighboring and adjacent properties.

Mr. Lank noted that the Property is zoned Agricultural Residential and is not a planned residential community.

Mr. Hudson stated that transitional housing is a means of giving the women acclimation into a residential setting; that the house was in disrepair; that everyone that moves into a neighborhood is a stranger; that there is no control over who may move in next door if the dwelling were purchased by a private citizen; that he does feel that there should be a limit on the number of children permitted to reside in the home; that the women applying to reside in the facility must meet certain criteria; that the Applicant has twenty (20) years of experience in helping the veterans; and that he would support approval of the Application with restrictions.

Mr. Workman stated that he does not feel the Applicant has met the standards for granting a special use exception; that the number of children possible was never addressed; that he is concerned with how the monitoring is going to be conducted and enforced; that there are not enough bedrooms available for this use; that there are sixteen (16) residential lots in the area, which is a neighborhood in his opinion; and that there is no proof that this use will not substantially adversely affect the neighborhood.

Mr. Rickard stated that the Board could approve the use for a period of two (2) years.

The Board discussed the possibility of placing restrictions on the approval of the Application.

Mr. Hudson stated that he would move that the Board recommend approval of Special Use Exception Application No. 11168 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of the adjacent and neighboring properties. As part of his Motion, Mr. Hudson moved that the following conditions be placed on the approval:

- a. The approval is granted for a period of two (2) years.
- b. No more than six (6) adult female veterans and no more than eight (8) total persons, not including staff members, may reside in the dwelling at any given time.

Mr. Hudson gave the following reasons for his Motion:

1. The Applicant has a history of providing home for veterans that will not substantially affect adversely the uses of neighboring and adjacent properties.
2. The proposed housing is designed for residential use in a residential area.
3. The existing dwelling has been unoccupied for over a year and fell into disrepair. The Applicant has taken steps to make improvements to the dwelling and intends to maintain the exterior of the property which will improve the area.
4. The Applicant referenced a study which evidences that the proposed housing will have a neutral or positive effect on housing prices in the neighborhood.

5. Opposition to the Application did not present any evidence from a realtor or appraiser as to substantial adverse effect to real estate values
6. The proposal does not appear to have an adverse effect on traffic in the area.
7. The Applicant has testified that visitor access to the site will be limited and that residents will be transported by a van for their appointments and daily living.
8. The Applicant's contractor testified that improvements have been made to the dwelling and the septic system would be placed in the same location as the existing septic system.
9. No signage will be located outside the Property to note its usage.
10. The residents of the home will be required to follow certain rules and regulations and will be discharged from the home if they fail to adhere to those rules.
11. The home will house a maximum of six (6) adult female veterans and no more than eight (8) total persons not including staff members.

Motion by Mr. Hudson, seconded by Mr. Rickard, and carried that the special use exception be **granted for the reasons stated and for a period of two (2) years and with the condition that no more than six (6) adult female veterans and no more than eight (8) total persons, not including staff members, may reside in the dwelling at any given time.** Motion carried 3 – 2.

The vote by roll call: Mr. Mills – nay, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – nay, and Mr. Callaway – yea.

**Meeting Adjourned 10:45 p.m.**